

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAMANTHA STARNES, and	:	CIVIL ACTION
AARON STARNES, a minor by his	:	
legal guardian, SAMANTHA	:	
STARNES,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
FELIX DeMURO, SR.,	:	
DOMINIC DeMURO,	:	
FELIX DeMURO, JR.,	:	
MICHAEL DeMURO,	:	
JOSEPH GREENWOOD,	:	
THERESA A. MARTIN and	:	
ELENA DeMURO,	:	
Defendants.	:	NO. 98-CV-2899

MEMORANDUM AND ORDER

J.M. KELLY, J.

AUGUST 10, 2000

Before the Court is a Motion to Certify that the Appeal is not Frivolous, but Presents a Substantial Question According to the Requirements of 28 U.S.C. § 753(f)(1994) filed by the Defendants. The Defendants were personally served with Plaintiffs' Complaint between July 2, 1998 and March 11, 1999. They have never responded to Plaintiffs' Complaint. Defaults were entered against the Defendants on various dates with the last default being entered against Frank DeMuro, Jr. on March 31, 1999. Nearly a year later, the Court entered an Order scheduling an assessment of damages hearing for April 10, 2000. At the hearing, the Defendants who were represented by counsel moved to

open the defaults entered against them. An entry of default may be vacated in accordance with Rule 60(b). See Fed. R. Civ. P. 55(c). "On a motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect." Id. 60(b). None of the Defendants offered a justifiable reason why they failed to answer the Complaint and their motion was therefore denied.

Following the hearing the Court entered default judgments against the Defendants jointly and severally in favor of Plaintiff Samantha Starnes in the amount of \$100,000 and in favor of Plaintiff, Aaron Starnes in the amount of \$50,000. The judgments entered by the Court were supported by the unrebutted testimony of the Plaintiffs, therefore there exists no substantial question to be decided upon appeal in this matter. See Maloney v. E.I. DuPont de Nemours & Co., 396 F.2d 939, 940 (D.C. Cir. 1967) (holding that appellant bore burden of demonstrating that substantial issue exists).

Accordingly, it is ORDERED that Defendant's Motion to Certify that the Appeal is not Frivolous but Presents a Substantial Question According to the Requirements of 28 U.S.C. § 753(f)(1994) is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.